

Appl. No. 10/506,816  
Art Unit 3743  
Reply to Office Action mailed  
August 9, 2005  
Attorney Docket No. 26359U

**AMENDMENTS TO THE DRAWINGS**

The attached two sheets of drawings include changes to Sheets 1/5 and 2/5. These sheets, which include Figure 1, 2A, and 2B, replace the original sheets including Figures 1, 2A, and 2B. In Figure 1, the element labeled "P" has been changed to --F--; and in Figure 2B the element labeled "G" has been changed to --C--.

Attachment: Replacement Sheets

## REMARKS

Claims 1 – 31 were pending in the application. Claims 1, 2, 9 - 11, and 18 have been amended and new claims 32 - 35 have been added. Accordingly, claims 1 - 35 are presented for reconsideration and further examination in view of following remarks.

In the outstanding Office Action, the Examiner rejected claims 1, 12 - 17, 20, 22, and 25 - 31 under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent No. 6,701,925 to Resnick; and objected to claims 2 - 11, 18, 19, 21, 23, and 24 as being dependent upon a rejected base claim.

By this Response and Amendment, Figures 1 and 2B have been amended to correct typographical errors, claims 1, 2, 9 - 11, and 18 are amended, new claims 32 - 35 have been added, and the prior art rejection is traversed.

Support for the amendment to claim 1 can be found for example on page 6, lines 17-22 of the Specification, and in Fig. 2B. Support for the amendment to claim 2 includes the subject matter previously presented in claim 1. Claims 9 through 11 and 18 have been amended to correct the dependencies, due to lack of antecedent basis in the claims as previously presented. New claim 32 depends from claim 1, and adds the limitation that the exhalation flow path is in fluid communication with the mouth/nose of the user, at least when the exhalation valve is open. Support for this feature can be found in the paragraph beginning on page 7, line 28 (that each respiratory unit comprises a one-way exhaling valve) in light of page 6, lines 17-22 (that the respiratory units are in flow communication with the nose and mouth of the user). New claim 33 defines all of the features of original Claim 1, with the added limitation that there is substantially continuous fluid communication at least between the chamber and the mouth/nose of a user. Support for this feature

can be found, for example, in Fig. 2B. New claim 34 defines all of the features of original claim 1, with the added limitation that the hood is free of any means adapted to sealingly engage it to a portion of the face of the user, at least in the vicinity of the mount/nose location. Support for this feature can be found, for example, in Fig. 2B. New claim 35 defines all of the features of original claim 1, with the added limitation that the chamber constitutes a breathing interface with a nose/mouth of a user. Support for this feature can be found, for example, in Fig. 2B.

It is respectfully submitted that no new matter within the meaning of 35 U.S.C. §132 has been introduced to the present application.

### **Rejection under 35 U.S.C. 103**

The Examiner rejected claims 1, 12 - 17, 20, 22, and 25 - 31 as being unpatentable over Resnick.

### **Response**

Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, the Examiner must establish that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

It is respectfully submitted that Resnick does not disclose, teach or suggest all of the features of the presently claimed invention.

According to the invention, a personal protective breathing mask is provided which may be collapsed into a pocket-size package, radially available for use and easily donned to provide a protective breathing device which is affordable and instantly useful in protecting individuals at the event of toxic air, chemical and biologic emergencies. See Specification a page 2, lines 21 - 25.

Independent claim 1, as amended, recites a combination of elements, *inter alia*, "...wherein in a donned position of the breathing hood a chamber is formed at a mouth/nose location thereof." [*emphasis added*]

Initially, it is respectfully submitted that Resnick is not a proper reference. The Resnick patent was published on March 9, 2004, and filed April 11, 2002. The present application has an effective (international) filing date of February 26, 2003, i.e., prior to the grant date of the Resnick patent. Furthermore, the present application claims foreign priority from an earlier application, filed March 5, 2002. Thus, the 102(e) date of the Resnick patent is later than the priority date of the present application, and this patent is not a citable reference.

This being the case, claim 1 has been minimally amended to clarify the subject matter for which protection is being sought, but without narrowing the scope thereof, and was not made to distinguish over any cited art. Therefore, the amendments have not narrowed the scope of the claims within the meaning defined in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002).

Moreover, as claims 12 - 17, 20, 22, and 25 - 31 depend from independent claim 1, these claims are also believed to be allowable.

Accordingly, Applicant respectfully requests that the rejection of claims 1, 12 - 17, 20, 22, and 25 - 31 under 35 U.S.C. § 103(a) be withdrawn.

### **Claim Objections**

The Examiner objected to claims 2 - 11, 18, 19, 21, 23, and 24 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Response**

Independent claim 2, as currently amended, now includes subject matter of claim 1 as previously presented. The Examiner indicated that this combination, *inter alia*, would be allowable. Therefore, Applicant submits that claim 2, as currently amended, overcomes the Examiner's objection.

Dependent claims 3, 4, 6 - 11, 18, 29, 21, 23, and 24 ultimately or directly depend from claim 1, and should therefore be considered to be patentably distinguishable from the cited reference, at least in view of claim 1. Claim 5 is dependent from claim 2, and should therefore be considered to be patentably distinguishable from the cited reference, at least in view of the patentability of claim 2.

Therefore, Applicant respectfully requests that the objection be withdrawn.

### **New Claims**

New dependent claim 32 depends from claim 1, and should therefore be considered to be patentably distinguishable from the cited reference, at least in view of claim 1.

New Independent claim 33 is based on claim 1 and includes the added limitation that there is substantially continuous flow communication between the chamber and the mouth/nose of the user when donned.

New independent claim 34 of the present application as currently amended, recites a combination of elements, *inter alia*, “the hood forms a chamber at a mouth/nose location thereof.” Please note that the term “hood” is distinct from the term “breathing hood”, the latter referring to the entire apparatus, including all of its constituent parts, while the former refers to the portion of the protective hood which is made of a special fire resistant material and forms the dome about the user’s head (see, for example, page 5, lines 20-23 of the Specification). Claim 34 defines the chamber as being “free of any means adapted to sealingly engage it to a portion of the face of the user, at least in the mouth/nose location.” The formation of the chamber from the material of the hood itself enables this. This feature has several advantages, some of which are listed on page 9 of the Specification (lines 1 through 11).

New independent claim 35 of the present application as currently amended, recites a combination of elements, *inter alia*, “the chamber constitutes a breathing interface with a nose/mouth of a user.” As noted above, the chamber is formed from the hood, i.e., from the portion of the protective hood which is made of a special fire resistant material and forms the dome about the user’s head, and from other parts of the apparatus (i.e., the “breathing hood”).

Applicant respectfully submits that these claims are allowable over the Resnick patent at least for similar reasons regarding independent claims 1 and 2

### CONCLUSION

In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

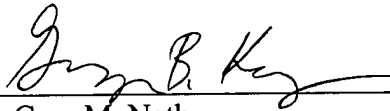
Respectfully submitted,

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